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This unclassified report is in response to section 1274 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Public Law 115-232, August 13, 2018. The Department of Defense (DoD) submitted a comprehensive classified annex to supplement this unclassified report.

Preface

DoD does not, and will not, tolerate abuse of detainees. DoD personnel are required to conduct intelligence interrogations, detainee debriefings, and tactical questioning of persons – whether in U.S. or foreign custody – humanely and in accordance with applicable law and policy, including the U.S. Army Field Manual 2-22.3, “Human Intelligence Collector Operations,” September 2006, and DoD Directive (DoDD) 3115.09, “DoD Intelligence Interrogations, Detainee Debriefings and Tactical Questioning,” October 11, 2012, Incorporating Change 2, Effective April 27, 2018. Regardless of whether a detainee is in U.S. or foreign custody, DoD interrogators may not use any interrogation technique or approach that is not authorized by, and listed in, Army Field Manual 2-22.3.

The Secretary of Defense requires all DoD personnel to comply with law and policy and to conduct themselves in the most ethical manner at all times. Those who do not comply with these standards will be held accountable. The Secretary also expects U.S. allies and partners to uphold their responsibilities under international law regarding the humane treatment of detainees, consistent with Common Article 3 of the Geneva Conventions, including prohibitions against abusive interrogation techniques. No person interrogated, debriefed, or questioned by DoD personnel, regardless of that person’s location or custody circumstances, will be subject to cruel, inhuman, or degrading treatment.

DoD Detention and Intelligence Interrogation Policies and Guidance in Yemen.

Given the active threats against our homeland posed by terrorist networks operating from Yemen, DoD personnel have been in Yemen since May 2016 supporting operations against al-Qa’ida in the Arabian Peninsula and Islamic State of Iraq and Syria-Yemen. U.S. forces do not conduct detention operations in Yemen; rather, U.S. forces conduct intelligence interrogations of detainees held in partner custody.

All DoD interrogators and debriefers are trained in the law of armed conflict and humane treatment standards, and trained on how to look for, and report on, any detainee abuse. Pursuant to DoDD 3115.09, DoD personnel are required to report immediately to their chain of command or supervision any suspected or alleged violation of DoD policy, procedures, or applicable law relating to intelligence interrogations, detainee debriefings, or tactical questioning for which there is credible information. This includes any suspected or alleged violations by non-DoD U.S. or foreign personnel.

Based on information gathered at this time, DoD has determined that DoD personnel have neither observed, nor been complicit in, any cruel, inhuman, or degrading treatment of detainees in Yemen.

Partner Detention Operations and the Humane Treatment of Detainees.

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DoD takes detainee abuse allegations and the investigation of detainee abuse very seriously, whether it occurs in U.S. or foreign partner custody. Based on information to-date, DoD has not developed any independent, credible information indicating that U.S. allies or partners have abused detainees in Yemen.

DoD also takes Gross Violations of Human Rights (GVR) very seriously. DoD's policy on GVHR is reinforced by a Secretary of Defense memorandum published on August 18, 2014, on the "Implementation of Section 8057, DoD Appropriations Act, 2014." That memorandum states that "all DoD Components will promptly report any relevant information in their possession about GVHR by units of foreign security forces to the Office of the Under Secretary of Defense for Policy (Stability and Humanitarian Affairs) through the Joint Staff (J-5)." Additionally, in a July 7, 2017, letter to Senator McCain, Secretary Mattis reiterated that "if U.S. military personnel suspect a violation of the law of armed conflict, including by forces they are observing, DoD policy requires such personnel to report the violation through their chain of command."

DoD has not assessed any violations of section 362 of title 10, United States Code (DoD Leahy law) in Yemen, to date. Leahy laws would apply, and would be enforced, if the unit responsible for the detainees were receiving U.S. assistance and DoD had credible information that the unit had committed gross violations of human rights. However, foreign partners conducting detention operations in Yemen do not receive U.S. assistance that would be subject to Leahy law. Additionally, no waiver or exception has been granted to any U.S. partner under the DoD Leahy law while conducting operations in Yemen. Regardless of Leahy applicability in Yemen, DoD personnel have not observed any indications of detainee abuse by foreign partners.